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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re L.L. et al., Persons Coming Under
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

R.M. et al.,

Defendants and Appellants.

E071411

(Super.Ct.No. RIJ1600676)

OPINION

APPEAL from the Superior Court of Riverside County. Walter H. Kubelun,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and
Appellant L.L.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and
Appellant R.M.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and Prabhath D. Shettigar, Deputy County Counsel, for Plaintiff and Respondent.

Defendants and appellants L.L. (Mother) and R.M. (Father; collectively, Parents) appeal the termination of their parental rights to L.L. (a girl, born Feb. 2012), C.M. (a girl, born May 2015) and A.M. (a boy, born July 2016; collectively, the children) at a Welfare and Institutions Code section 366.26¹ hearing.

Mother contends the juvenile court erred by failing to apply the beneficial parent/child relationship exception of section 366.26, subdivision (c)(1)(B)(i).²

FACTUAL AND PROCEDURAL HISTORY

A. INITIAL DETENTION

On August 12, 2016, plaintiff and respondent Riverside County Department of Public Social Services (Department) filed a section 300 petition (petition) against Parents. L.L. was four years old, C.M. was 14 months old, and A.M. was one month old. They all had been detained from Father but remained with Mother. It was alleged against Father under section 300, subdivision (b), failure to protect, that he perpetrated acts of domestic violence against Mother, including hitting her with an open hand and closed fist, scratching her, choking her, throwing objects at her and putting out cigarettes on her arms. In addition, he abused controlled substances, including but not limited to

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Father joins, claiming if this court reverses the termination of Mother's parental rights his parental rights should be reinstated.

marijuana. As for Mother, she demonstrated a limited ability to protect herself from the ongoing domestic violence in the home, as she had repeatedly failed to contact law enforcement to report the abuse, and refused to press charges against Father. In addition, Mother abused controlled substances, including but not limited to marijuana. C.M. had tested positive for marijuana at her birth, and Mother tested positive for marijuana at the time she gave birth to A.M.

In support of the petition, the Department submitted a declaration from a social worker in support of a warrant authorizing protective custody. On August 11, 2016, the social worker responded to Parents' home in response to a referral for general neglect and sexual abuse. While Mother was in the hospital giving birth to A.M., she had her 15-year-old niece stay at their home to help care for L.L. and C.M. The niece reported that Father sexually abused her.

The social worker spoke with Mother, who disclosed that Father had been abusing her for the prior three years. In the prior seven days, defendant had choked and scratched her. The social worker observed scratches on Mother's neck. Parents had engaged in a fist fight resulting in the right side of Mother's face being swollen and her ribs hurting. Father had hit her with an open hand and a closed fist. He had thrown objects at her. He had put cigarettes out on her arm. He also was verbally abusive. Mother stated that the children were present during these altercations. Mother also told the social worker about an incident occurring two years prior where Father cut Mother on the arm with a "deer" knife and she had to receive stitches. The police were called but Mother told them it was an accident.

An amended petition was filed on August 16, 2016 (first amended petition). Mother had entered a domestic violence shelter with the children. At a detention hearing conducted on the first amended petition, the children were detained from Father and remained in Mother's custody, and a temporary restraining order was issued.

A jurisdiction/disposition report was filed by the Department on September 2, 2016, for the first amended petition, recommending that the children remain with Mother on a family maintenance plan. On October 13, 2016, at the date set for the jurisdiction/disposition hearing on the first amended petition, the Department requested that the matter be continued. The Department was now recommending that the children be removed from Mother's care because she had contact with Father despite the restraining order. The trial court ordered the children detained from Mother.

B. SECOND AMENDED PETITION

A second amended petition was filed on October 17, 2016 (second amended petition). An additional allegation was added to the second amended petition that Parents had disobeyed court orders to stay away from each other and keep Father away from the children. Mother and Father had been seen together despite the restraining order. The juvenile court ordered the children be detained in foster care. Mother was granted twice weekly supervised visits with the children. At the detention hearing on the second amended petition, the juvenile court found a prima facie showing that the children came within section 300, subdivision (b), and they were detained from Mother. Since the detention hearing, Mother was present for one visit with the children; Mother missed two visits with the children due to lack of transportation.

Between October 2016 and December 15, 2016, Mother had a supervised four-hour visit with the children. She was appropriate and attended to all of their needs. It was clear L.L. and C.M. had a strong bond with her. She had five other supervised visits with the children. Mother was very bonded to the children and they were always happy to see her.

C. JURISDICTION/DISPOSITION HEARING ON THE SECOND
AMENDED PETITION

The jurisdiction/disposition hearing was conducted on December 20, 2016. Mother had completed her domestic violence program. She was working part-time. She remained housed in a shelter. Mother had progressed to unsupervised visits and she asked the court to liberalize visits to overnight and weekends. The trial court was willing to grant family maintenance at some point as long as there was a restraining order in place. The juvenile court found the allegations in the second amended petition were true by a preponderance of the evidence. Family reunification services were granted to Parents. The Department was allowed to liberalize visitation between Mother and the children.

D. PROCEEDINGS LEADING UP TO THE SETTING OF THE SECTION
366.26 HEARING

On June 7, 2017, the Department filed a report recommending that the reunification services for Parents be terminated and that visitation be reduced to monthly visits. During the reporting period, Mother had moved four times. Mother was making some progress on her case plan. Mother's visitation with the children was inconsistent.

She had attended five visits since December 2016 but she had *cancelled 12 visits*. She was late for two of the visits.

An addendum report was filed by the Department on July 13, 2017. Mother cancelled a visit with the children on July 10, 2017, and reported she had been drinking alcohol. Mother had several positive drug tests for cocaine and marijuana since the last report. Mother's therapist recommended additional counseling for Mother before she reunified with the children. According to the therapist's report, Mother needed additional therapy to deal with her anxiety and depression, and the cycle of violence. The therapist made no analysis as to Mother's relationship with the children.

The Department documented several missed visits by Mother since July 2017 in an additional report. Mother called and cancelled three visits in a row in August 2017. During visits that were supervised, it was noted Mother had trouble caring for all three of the children at the same time. Further, instead of bringing the children lunch, she brought candy and fruit punch, which made them all sick. She did not come prepared with diapers or wipes. L.L. and C.M. had to be prompted to give Mother a hug and a kiss at the end of the visits. A visit had to be cancelled because of Mother testing positive for cocaine. The Department was concerned that (1) Mother's therapist did not recommend reunification at that time; (2) Mother continued her drug use; and (3) her inconsistent visitation foreclosed the possibility of reunifying with the children.

In September 2017 Mother had a supervised visit with L.L. during which there were no concerns and L.L. gave Mother a kiss and hug at the end of the visit. She had another visit with the children but she failed to bring diapers. Mother cancelled one visit

and on the next visit on October 6 she tested positive for cocaine and the visit was cancelled. Another report was submitted on November 8, 2017. Mother had not secured stable housing and she was living in a hotel room. Mother had missed several therapy sessions. A hair follicle test came back positive for cocaine. Mother had attended three visits with the children since October, but each time had failed to bring diapers and wipes. She also continued to have trouble caring for all three of the children together.

A contested review hearing was conducted on hearing was conducted on November 14, 2017, at which Parents' reunification services were terminated and Mother was granted weekly visits.

E. SECTION 366.26

On March 2, 2018, the Department filed a report for the section 366.26 hearing. Since the last hearing in November 2017 Mother had been more consistent in her visitation with the children; however, Mother continued to have trouble interacting with all three children at the same time. She brought sugary snacks, which made C.M. sick. In January and February 2018 Mother started telling the children they were going to be able to come home with her in the future, despite being admonished not to. She had phone calls with the children where she spent most of the time speaking with L.L. and told L.L. to let C.M. and A.M. know that Mother loved them rather than Mother telling them directly. The matter had to be continued to find an adoptive family.

On May 24, 2018, the children had been placed in a prospective adoptive home. L.L. expressed wanting to live with the prospective adoptive parents. Mother missed three scheduled visits in March 2018 due to work or lack of transportation. When she did

visit with the children in the beginning of March, she was appropriate and the children were happy to see her. Mother told all of them that she loved them. At a visit near the end of March 2018 the children ran to her evidencing they were happy to see her. L.L. was not following Mother's directives at the visit and Mother appropriately handled the situation. Visits in April 2018 were appropriate. They all played together and Mother expressed to them that she loved them. The children did appear to be attached to Mother as they were sad at the end of the visits. At a visit on May 3, 2018, the children ran up to Mother and told her they loved her.

During a visit on May 17, 2018, L.L. told Mother she was getting a new mom and dad and that she was excited. Mother got upset and told L.L. that she would always be her mother. L.L. told Mother they were going to adopt her and Mother responded they were not going to adopt her and Mother was going to get them back. L.L. started crying. Mother was admonished not to discuss the children returning to her care but she continued and the visit was terminated early. On the way home from the visit, L.L. expressed that she wanted the prospective adoptive parents to be her "mommy and daddy."

Two visits after the above incident were appropriate. On May 31, 2018, L.L. did not want to attend a visit with Mother because she did not bring enough food. The visit proceeded and at the end of the visit L.L. advised the social worker that she was confused as to who her mom was. Mother missed two scheduled visits in June. Mother attended all of her visits in July 2018 kissing and hugging the children at the end of each visit. During a visit on August 3, 2018, the children seemed attached to Mother and cuddled

with her. They were happy to see her. L.L. and C.M. told her numerous times that they loved her.

The Department acknowledged a strong bond between the children and Mother. Although there was a strong attachment with Mother, the children also had a strong bond with the prospective adoptive parents. The Department expressed it was confusing for the children to be with the prospective adoptive family and have visits with Parents. Visits should be discontinued. Further, the strong bond between Mother and the children did not mitigate the safety concerns regarding domestic violence and Mother's substance abuse.

The contested section 366.26 hearing was conducted on September 26, 2018. Anne Stahler had supervised visits between Mother and the children during the prior 18 months. The children were always happy to see Mother. They referred to Mother as "mom." Mother was very loving and nurturing with the children. In the prior six months, she had been consistent in visitation. In the prior nine months, Mother never appeared to be under the influence of a controlled substance. The children would be sad in the car on the way home from visits; they missed Mother. It was Stahler's opinion that Mother occupied a parental role during visits.

Mother also testified. Mother planned for her visits with the children. She was extremely bonded to the children. They saw her as a parent. She had turned her life around and wanted a chance to reunify.

Mother's counsel argued the beneficial parental bond exception applied. Mother was consistent in visitation and there was clearly a bond. Even though C.M. and A.M. had not spent a significant amount of time in Mother's care, there was a significant bond. Mother requested that guardianship, rather than termination of parental rights, be considered.

The Department argued there was nothing to show that the children would be harmed if parental rights were terminated. It also noted Mother missed visits during the first 18 months of the dependency case. Mother had lived just a short period of time overall with the children during the prior two years. Counsel for the children stated that L.L. expressed a desire to stay with the adoptive family. Counsel believed it was in the best interests of the children that parental rights be terminated and the children be freed for adoption. They deserved a stable home.

The juvenile court acknowledged it was not an easy decision. It found a clear bond between Mother and the children. The juvenile court noted that the first six months of the case were "complete turmoil." In the middle of the dependency proceedings, there was inconsistent visitation. Parents had failed to complete their plans. The children deserved permanency and further time was not in the best interests of the children. They deserved stability. It concluded, "These children have found a forever home with prospective adoptive parents, who can provide that permanency and stability that the children need as set forth by minors' counsel."

The parental rights of Parents were terminated.³ The juvenile court found there was no showing of detriment to the children if parental rights were terminated, to meet any exception under section 366.26, subdivision (c)(1). The children were freed for adoption.

DISCUSSION

Mother claims she has a significant bond with each of the children and the juvenile court erred by failing to apply the parental bond exception of section 366.26, subdivision (c)(1)(B)(i). Father joins mother's arguments claiming that if Mother's parental rights are reinstated, then he is entitled to have his parental rights reinstated as well.

After reunification services are denied or terminated, “ ‘the focus shifts to the needs of the child for permanency and stability.’ ” (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) Adoption is preferred once reunification services have been terminated and, “adoption should be ordered unless exceptional circumstances exist.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) “ ‘Guardianship, while a more stable placement than foster care, is not irrevocable and thus falls short of the secure and permanent future the Legislature had in mind for the dependent child.’ ” (*Celine R., supra*, at p. 53.)

Under section 366.26, subdivision (c)(1), the juvenile court must terminate parental rights if it finds “by clear and convincing evidence” it is likely the child will be adopted. The children here were clearly going to be adopted. There are several statutory exceptions. Under section 366.26, subdivision (c)(1)(B)(i), one such exception exists

³ The juvenile court confirmed that Father was the presumed father.

where “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” A beneficial relationship is established if it “ ‘promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.’ ” (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534.)

The parent has the burden of proving the statutory exception applies. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) The parent must show both that (1) a beneficial parental relationship exists and that (2) severing that relationship would result in great harm to the child. (*Ibid*; see also *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207.)

“[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) “ ‘A biological parent who has failed to reunify with an adoptable child may not derail adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child’s need for a parent.’ ” (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937.) “The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment from child to parent.” (*In re LYL* (2002) 101 Cal.App.4th 942, 954.)

“In reviewing challenges to a trial court’s decision as to the applicability of these exceptions, we will employ the substantial evidence or abuse of discretion standards of review depending on the nature of the challenge.” (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080.) “The first determination—most commonly whether a beneficial parental or sibling relationship exists, although section 366.26 does contain other exceptions—is, because of its factual nature, properly reviewed for substantial evidence. [Citation.] The second determination in the exception analysis is whether the existence of that relationship or other specified statutory circumstance constitutes ‘a compelling reason for determining that termination would be detrimental to the child.’ ” (*In re K.P.* (2012) 203 Cal.App.4th 614, 622.) Based on the foregoing, the issue of whether a beneficial relationship exists is reviewed for substantial evidence and the decision of whether that relationship constitutes a compelling reason for termination being detrimental to the child is reviewed for an abuse of discretion. (*Ibid.*)

The juvenile court found there was a clear bond between Mother and the children, but also noted that the visitation between Mother and the children had only recently been consistent. Here, the visitation was relatively consistent and we thus consider whether Mother met her burden of proving that this was a beneficial relationship between her and the children that promoted the well-being of the children “ ‘to such a degree as to outweigh the well-being the child[ren] would gain in a permanent home with new, adoptive parents.’ ” (*In re Brandon C., supra*, 71 Cal.App.4th at p. 1534.) Mother must show “more than frequent and loving contact, an emotional bond with the child, or

pleasant visits—the parent must show that he or she occupies a parental role in the life of the child.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.)

Mother failed to meet her burden of showing a beneficial parent relationship existed. C.M. and A.M. had spent more time out of Mother’s custody than they had spent with her. C.M. was just over one year old and A.M. was only a few months old when they were removed from Mother’s custody. Once removed, Mother missed numerous visits throughout the dependency proceedings including missing 12 visits during the reunification period between December 2016 and June 2017; in July 2017 and August 2017 she missed three visits and also during this time had a hard time supervising all three children; in October 2017 she missed several visits and a visit was cancelled due to her cocaine use; she missed three scheduled visits in March 2018; and she missed two scheduled visits in June 2018. It was also repeatedly reported that Mother did not bring diapers and wipes to the visits to adequately care for C.M. and A.M. These missed visits gave her less time to form a parental bond with C.M. and A.M., whom she only had in her care for a short period of their lives. There was no testimony that C.M. and A.M. were upset when they got home after the visits. Moreover, she did not adequately care for them by failing to bring proper supplies to the visits. Finally, as to C.M. and A.M., although they were happy to see her at visits and she told them she loved them, there was nothing to support they were particularly bonded to her or they considered her a parent.

As to L.L., she was with Mother until she was four years old. L.L. expressed her love for Mother. However, L.L. cried when Mother told her she would be getting her back instead of her being adopted. She expressed that she would rather live with the

prospective adoptive parents. L.L. clearly was bonded to the prospective adoptive parents and expressed she did not want to be in Mother's custody. She saw the prospective adoptive parents as her parents.

Additionally, Mother had not shown she could provide a stable environment for the children, showing that the relationship between her and the children promoted the well-being of the children “ ‘to such a degree as to outweigh the well-being the child[ren] would gain in a permanent home with new, adoptive parents.’ ” (*In re Brandon C.*, *supra*, 71 Cal.App.4th at p. 1534.) She began using cocaine during the dependency proceedings and could not find a stable home. Mother's therapist did not recommend that the children be returned to her care until she received additional counseling to deal with her anxiety and depression. All of the children had developed a significant bond with the prospective adoptive parents.

The Department finally placed the children in an adoptive home and the children immediately bonded with the prospective adoptive parents. Although the children were bonded with Mother, the juvenile court decided, looking to the entirety of the dependency proceedings, that termination of Mother's parental rights was the appropriate disposition. Despite the children having a loving relationship with Mother, she did not occupy a parental role that resulted in a positive impact in the children's lives, nor could she show she could provide a stable, drug-free home for them. Based on the foregoing, the juvenile court did not abuse its discretion by terminating Mother's parental rights and freeing the children for adoption.

DISPOSITION

The juvenile court's order terminating the parental rights of Mother and Father is affirmed.

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MILLER

Acting P. J.

We concur:

SLOUGH

J.

MENETREZ

J.